

HOUSE No. 243

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to secondhand dealers.

PETITION OF:

NAME:

Robert F. Fennell

DISTRICT/ADDRESS:

10th Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 234 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SECONDHAND DEALERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 101 of the General Laws, as appearing in the 2006 Official Edition, is hereby
2 amended by inserting the following words after the definition of "Deputy director":- "Second hand dealer", any
3 person, either principal or agent who engages in the business in the commonwealth of selling used goods, used
4 wares or used merchandise.

5 SECTION 2. Said section 1 of chapter 101 of the General Laws, as so appearing, is hereby amended by inserting
6 after the word "place," in line 8, the following words: - , including selling goods, wares or merchandise at a flea
7 market so-called.

8 SECTION 3. Said section 1 of chapter 101, as so appearing, is hereby further amended by inserting after the word
9 "months," in line 12, the following words: - Provided, however, that a flea market, so called, whether held inside
10 such tent, booth, building or other structure or in the open shall be considered a temporary or transient business.

11 SECTION 4. Section 3 of said chapter 101, as appearing in the 2002 Official Edition, is hereby amended in line 1
12 by inserting after the word "vendor" the following:-or second hand dealer

13 SECTION 5. Section 3 of said chapter 101, as so appearing, is hereby amended by striking the second sentence and
14 inserting in place thereof the following:-

15 Thereupon, upon the payment of a fee, as determined annually by the commissioner of administration under the
16 provision of section three B of chapter seven, the deputy director shall issue to him a state license authorizing him to
17 do business as a transient vendor or second hand dealer, subject to such local rules and regulations as may be made
18 in a city by the mayor and city council and in a town by the selectmen. Such fee shall be a dedicated fee which will
19 fund, in part, the record keeping system within the department of public safety as established by section 3A of this
20 chapter.

21 SECTION 6. Said chapter 101 is hereby amended by inserting after section 3, as so appearing, the following
22 section:-

23 Section 3A. (a) A transient vendor selling merchandise at a flea market, so called, or a second hand dealer shall be
24 registered with the department of revenue and shall have a sales tax identification number issued by said department.
25 (b) Such vendor shall keep a record of all purchases and sales of goods, wares and merchandise, including the source
26 from which such merchandise was obtained and shall issue sales receipts for all such sales and such receipts shall
27 contain the name, license number and sales tax identification number of such vendor.

28 (c) The true name, address, license number and sales tax identification number shall be posted by such vendor at the
29 place where such vendor is conducting business.

30 (d) Whoever leases or rents space to transient vendors at a flea market so called, or a second hand dealer shall
31 maintain a record of the date of such lease or rental, and the name, license number and sales tax identification

32 numbers of each such vendor. Such record shall be a public record and may be viewed or copied upon request
33 during regular business hours.

34 (e) the Department of Public Safety shall implement a record keeping system for transient vendors and second hand
35 dealers of goods, wares, merchandise acquired and sold at the registered place of business.

36 SECTION 7. Section 30 of chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby
37 amended by adding at the end thereof the following new paragraph:-

38 (6) whoever commits a violation of this section by intentionally altering, transferring, or removing any label, price
39 tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise
40 displayed, held, stored, or offered for sale by any store or other retail mercantile establishment and attempting to
41 purchase such merchandise personally or in consort with another at less than the full retail value with the intention
42 of depriving the merchant of all or part of the retail value thereof; or by intentionally transferring any merchandise
43 displayed, held, stored, or offered for sale by any sale or other retail mercantile establishment from the container in
44 or on which the same shall be displayed to any other container the intent to deprive the merchant of all or part of the
45 retail value thereof; or by intentionally recording a value for the merchandise which is less than the actual retail
46 value with the intention of depriving the merchant of the full value thereof shall be punished for a first offense by
47 imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than five
48 thousand dollars or by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in
49 the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars or by both
50 such fine and imprisonment.

51 SECTION 8. Section 30A of said chapter 266 of the General Laws, as so appearing, is hereby amended by inserting
52 after the eighth paragraph the following new paragraph:-

53 A violation of this section committed from three or more individual retail mercantile establishments,
54 notwithstanding whether the retail value of the goods obtained from each such individual retail mercantile
55 establishment is less than one hundred dollars, shall be punished for a first offense by imprisonment in the house of
56 correction for not more than two and one-half years or by a fine of not more than one thousand dollars or by both
57 such fine and imprisonment, and for a second or subsequent offense by imprisonment in the state prison for not
58 more than five years, or by a fine of not more than twenty-five thousand dollars or by both such fine and
59 imprisonment. Apprehension with goods reasonably believed to have been stolen from three separate retail
60 mercantile establishments shall be prima facie evidence of a violation under this paragraph.

61 SECTION 19. Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following
62 new section:-

63 Section 30B. Unlawful Use of Theft Detection Shielding or Deactivation Devices

64 Whoever knowingly manufactures, sells, offers for sale or distributes in any way a laminated or coated bag intended
65 to shield merchandise from detection by an electronic or magnetic theft detector; or knowingly possesses any tool or
66 device designed to allow, or capable of allowing, the deactivation, or removal from any merchandise, of any theft
67 detection device, with the intent to use such tool or device to deactivate any theft detection device on, or to remove
68 any theft detection device from, any merchandise without the permission of the merchant or person owning or
69 lawfully holding said merchandise; or intentionally deactivates in a retail establishment a theft detection device on,
70 or removes a theft detection device from, merchandise prior to purchase shall be punished for a first offense by
71 imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than one
72 thousand dollars or by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in
73 the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and
74 imprisonment in jail for not more than two years.

75 SECTION 10. Section 60 of chapter 266 of the general laws, as so appearing, is hereby amended by striking out the
76 entire section and inserting in place thereof the following new section: -

77 Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen
78 or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to
79 have been obtained from a person by a false pretense of carrying on business in the ordinary course of trade or
80 whoever obtains or exerts control over property in the custody of any law enforcement agency, or any individual
81 acting on behalf of a law enforcement agency, which is explicitly represented to him by any law enforcement officer
82 or any individual acting on behalf of a law enforcement agency as being stolen and who intends to deprive its
83 rightful owner permanently of the use and enjoyment of said property shall, if the value of such property does not
84 exceed two hundred and fifty dollars, be punished for a first offense by imprisonment in a jail or house of correction
85 for not more than two and one half years, or by a fine of not more than one thousand dollars; or if for a second or
86 subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be punished by
87 imprisonment in a state prison for not more than five years, or by imprisonment in a jail or house of correction for

not more than two and one half years or by a fine of five thousand dollars. It shall not be a defense that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused as having been obtained through the commission of a theft offense.

SECTION 11. Chapter 266 of the General Laws, as so appearing, is hereby amended by inserting the following new section:-

Section 60B Any transient vendor or second hand dealer, as defined in section one of chapter one hundred and one of the General Laws, who buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to have been obtained from a person by a false pretense of carrying on business and dealing in the ordinary course of trade, shall, be punished for a first offense by imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than five thousand dollars or by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars or by both such fine and imprisonment. There shall be no limitation of the time in which the owner of such stolen property may make claim for such property. There shall be no limitation of the time in which a transient vendor may be charged with the possession of such stolen goods, wares or merchandise